

R.D. # 0007-06
Sayreville, N.J.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

WATKINS & SHEPARD TRUCKING, INC.¹

Employer

and

CASE 22-RC-12700

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 641²**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

The Petitioner seeks to represent a unit of about 30 local drivers employed by the Employer, excluding 11 short-line drivers among other classifications. The Employer contends that the short-line drivers share a community of interest with local drivers and must be included in the petitioned-for unit. The parties agree that all employee classifications other than local and short-line drivers should be excluded. There is no history of collective bargaining for any of the employees involved here. I find, for the reasons described below, that the petitioned for unit is appropriate, and I shall order an election therein.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴
3. The labor organization involved claims to represent certain employees of the Employer.⁵
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.
5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:

All full-time and regular part-time local drivers employed by the Employer at its Sayreville, New Jersey facility, excluding all long haul drivers, regional drivers, short-line drivers, dispatchers, warehouse employees, customer service employees, overage/shortage and damage clerks, mechanics, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act and all other employees.

II. FACTS

³ Briefs filed by the parties have been considered.

⁴ The Employer is a Montana Corporation engaged in trucking from its terminal located in Sayreville, New Jersey, the only facility involved herein.

The Employer is engaged in the trucking and distribution of freight, employing drivers in four different classifications at 20 different facilities throughout the country. Those classifications are long-haul, regional, short-line and local drivers. Long-haul and regional drivers make lengthy trips of two or three weeks that involve distribution of freight between and among the Employer's suppliers and terminals. Local and short-line drivers then distribute that merchandise to customers. Long-haul and regional drivers are paid by the mile, dispatched from the Employer's central office in Montana and do not report to the manager of any individual terminal. The Employer and the Petitioner agree that long-haul and regional drivers are not involved in this matter. All the Employer's drivers hold certified drivers licenses (CDL).

The Employer's Sayreville facility specializes in the trucking of carpets and furniture by "less than truckload" deliveries during one trip to multiple customers, mostly warehouses and retail stores. The distribution area serviced by the Sayreville facility includes New Jersey, New York City, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Delaware, Maryland and parts of Virginia and Pennsylvania. Peter Guidice is the Sayreville terminal manager. Guidice was the only witness called by the Employer to testify in this matter.

Local drivers make deliveries within a 100-mile radius of the Sayreville facility using tractor trailers and box trucks.⁶ They do not make overnight trips and

⁵ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁶ The Sayreville facility has six 24-foot box trucks that are used by local drivers for deliveries in New York City. The tractor trailer fleet includes a combination of tractors with and without sleeping berths, and trailers in the following number and size: Eight or nine 35-foot pup trailers, four 45-foot trailers, ten 48-foot trailers and twenty-five 53-foot trailers.

the “day” or “city” tractors they use do not contain sleeping berths. Short-line drivers make overnight trips from the Sayreville facility using tractors trailers that contain sleeping berths. Local drivers begin and end each day at the Sayreville facility. Local drivers are not normally assigned the 53-foot trailers used by short line drivers and the city tractors they drive have a smaller wheel base than sleeper cabs. Local driver Ranell Kendall testified that smaller vehicles are easier to maneuver in the tight city streets that they must navigate. Most of the Employer’s business consists of repeat customers and local drivers perform many of the same stops on a regular daily route. Local drivers are usually responsible for unloading their trucks once they arrive at the customer’s facility and their trucks are outfitted with winches for doing so. The 53-foot trailers used by short-line drivers are not so equipped.⁷

Local drivers are the only drivers whom the Employer pays on an hourly basis with overtime, earning a wage rate that ranges from about \$16 to \$19 per hour depending upon length of service. They also accrue personal leave based upon the hours they work, while other drivers receive a fixed amount of vacation based upon their years of service. Local drivers work about 10 to 12 hours each day, Monday through Friday, punching in and starting work in staggered groups at about 6:00 AM, 7:00 AM or 8:00 AM. Short-line drivers do not punch the same time clock. The starting time of each local driver is designated on a list that is posted by management in the drivers’ office. This list does not contain the starting times of short-line drivers.

⁷ Guidice testified that short-line drivers should unload their trucks like local drivers while Kendall testified that the customers of short-line drivers perform that function. The record contains no indication that either witness had personal knowledge of the actual practice employed by short-line drivers in this regard and no short-line driver was called as a witness to clarify the matter.

Local drivers are issued company T-shirts to wear as a uniform, while short-line drivers are not.

Many of the sleeper cabs used by short line drivers also contain a refrigerator for supplies. The tractor trailers used by short-line drivers are larger than those used by local drivers because most are assigned 53-foot trailers and sleeper cabs have a longer wheel base than city cabs. Short-line drivers do not make trips between the Employer's terminals like over-the-road and regional drivers. Rather, they begin and end their trips at the Sayreville facility. Short-line drivers do travel to more remote locations out of state than local drivers -- as far as Maine, Ohio and Virginia. The Employer assigns short-line drivers trips in a regular geographic area (e.g., New England) and according to Guidice, although his testimony was not entirely clear, they service certain customers on a recurring basis.⁸ The trips of short-line drivers are scheduled for two or three days, but can last four or five days if delayed.

Short-line drivers are paid a daily salary with no overtime that starts at about \$206 per day.⁹ Short-line drivers normally work about 10-hours per day. Unlike local drivers, short-line drivers receive a "T-check card" to pay for refueling on the road and a per diem to cover other costs. They also have access to a company car that they may use for such things as shopping for food and supplies for their trips and they may take pre-approved non-employee passengers with them on trips. Local drivers are not

⁸ The Employer did not call any short-line drivers to testify at the hearing and did not produce documents reflecting regular stops made by short-line drivers.

⁹ Short-line drivers were paid by the mile like long long-haul and regional drivers until about eight-months to one year ago. The Employer's driving manual groups "Long Haul Drivers, Regional Drivers or Short-Line drivers" in one "classification" of drivers that are FLSA exempt employees "paid primary by the mile" without overtime. "Hourly Local Drivers" are classified separately as non-exempt employees

allowed to take passengers on their routes and they do not use the company car. Short-line drivers must keep a log of their trips while local drivers do not. The starting time of short-line drivers varies depending upon the location and availability of their first customer. Short-line drivers are scheduled to work Monday to Friday, but may be required to work on the weekend if their starting time or deliveries require it.

All Sayreville drivers are subject to the same drug testing policy, work rules, hiring process, disciplinary procedure and government regulations. All Sayreville drivers also receive the same initial employee orientation and training, and share the same health insurance, 401(k) plan, Christmas bonus, parking lot, bank of mail boxes and holidays. Short-line drivers are paid their standard daily salary for holidays while local drivers who work 10 to 12 hours each day are paid for eight hours of work. All Sayreville drivers receive from dispatch the same type of paperwork and perform standard pre and post-trip inspections of their trucks before and after their trips.

The Employer employs three dispatchers who are responsible for day-to-day supervision of Sayreville drivers – John Morio, David Naygar and Tony Farkas. Morio and Naygar are dedicated to dispatching the local drivers while Farkas is dedicated to dispatching the short-line drivers.¹⁰ Guidice testified that all three dispatchers are available to field questions from the road of local and short-line drivers alike. However, Kendall testified that he communicates almost exclusively

entitled to overtime. The manual has not been updated to reflect the daily salary of short-line drivers or reclassify them.

¹⁰ The dispatchers schedule and route deliveries, make adjustments based on delays and problems reported by drivers, track the whereabouts of drivers who check-in regularly, and answer questions of the drivers regarding their routes.

with Morio and Naygar because they, not Farkas, are familiar with his local deliveries.¹¹ Drivers communicate with the dispatchers by Nextel radio. The Nextel radios used by all short-line drivers are also enabled for use as a cellular telephone. Only about 40% of the Nextel devices used by local drivers are cellular enabled in addition to the radio function.

Guidice testified that short-line drivers may be assigned local deliveries at the end of the week if they do not get back “in time” from their first run to make another multi-day trip.¹² According to Guidice, of 11 short-line drivers, one or two of them make local runs at the end of each week. Guidice also testified that short-line drivers may be assigned local deliveries if a holiday would otherwise intervene in a multi-day trip.¹³ However, Kendall testified that he rarely sees short-line drivers at the Sayreville facility. Kendall testified that he has seen them leaving for or returning

¹¹ Guidice testified that the short-line dispatcher and local dispatchers may cover for each other in the event of an absence, but the nature and frequency of that coverage is unknown.

¹² The testimony of Guidice is not entirely clear in this regard because he also testified that short-line drivers may be required to work weekends if their trips require it. However, it appears that short-line drivers who return late from their first trip are not necessarily assigned another multi-day trip if it would clearly require them to work on the weekend.

¹³ Guidice testified that if Christmas or July 4 happens to be on a Tuesday, and the short-line driver does not want Monday off, the short-line driver may be assigned local deliveries that Monday. However, Guidice testified that short-line drivers often want to take the extra day off as vacation, and are generally allowed to do so unless the need of a customer intervenes.

from local routes perhaps once every two or three weeks on a Friday. The Employer did not introduce into evidence any documents reflecting the identity of short-line drivers who have performed local work or the frequency thereof. Short-line drivers receive their standard daily salary when they work as a local driver, not a local hourly rate. Local drivers do not perform short-line runs. Indeed, not all local drivers possess a Class A-CDL, which is required to operate tractor trailers with a sleeper cab (some have a Class B-CDL).

Kendall testified (although his testimony was not entirely clear) that the skills of short-line and local drivers are not identical because local drivers must navigate tight streets in the city and short-line drivers do not. The evidence did indicate that one short-line driver who requested a transfer to local driver a “while back,” was accommodated and transferred to that position about one month before the hearing of this matter. The evidence does not indicate what background, training or tutelage, if any, this former short-line driver received before he was transferred. There is no evidence that local drivers have transferred to short-line driver positions.

The record reveals that the deliveries performed by short-line and local drivers are not interrelated or otherwise dependent upon each other. Guidice testified that local routes would still be run if short-line drivers could not do their work and vice-versa. Drivers do not participate in the loading of their own trucks and they do not otherwise handle the merchandise that they deliver.

III. ANALYSIS

It is well established that the Act requires only that a petitioner seek an appropriate unit, and not the most appropriate or comprehensive unit. *See, Morand Brothers Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F. 2d 576 (7th Cir. 1950) and *Capital Bakers*, 168 NLRB 904 (1967). In deciding an appropriate unit, the Board first considers the union's petition and whether the unit sought is appropriate. *Overnite Transportation Company*, 322 NLRB 723 (1966). A petitioner's desire concerning the composition of the unit which it seeks to represent constitutes a relevant consideration. *Marks Oxygen Company of Alabama*, 147 NLRB 228 (1964).

The Board has long held that local drivers and over-the-road drivers constitute separate appropriate units where it is shown that they are clearly defined homogeneous and functionally distinct groups with separate interests which can effectively be represented separately for bargaining purposes. *Georgia Highway Express, Inc.*, 150 NLRB 1649 (1965); *Alterman Transport Lines*, 178 NLRB 122 (1969); *Gluck Bros.*, 119 NLRB 1848 (1958); *English Freight Company*, 58 NLRB 1387 (1944); *see also Jocie Motor Lines*, 112 NLRB 1201 (1955). However, the Board has distinguished “traditional over the road drivers” from drivers whose highway trips take hours rather than days and “are not away from the plant overnight or for lengthy periods.” *Carpenter Trucking*, 266 NLRB 907 (1983).

Based upon the above and the record as a whole I find that there is not a sufficient community of interest between the local and short-line drivers requiring them to be included in the same unit. Short-line drivers perform overnight routes and are regularly away from the Sayreville facility for two to five days at a time. Local

and short-line drivers have different methods of payment, separate dispatchers and supervision, distinct vehicles, equipment and service areas, limited contact and interchange and no interdependence or integration of their operations. It is also significant that short-line drivers who perform local work are not integrated into the pay structure of local drivers when they do so. Accordingly, I find that short-line drivers have divergent interests from those local drivers sought by the Petitioner and therefore, should not be included in the unit.

In this regard, I find distinguishable the Board's decision in *Carpenter Trucking*, above, upon which the Employer relies. In *Carpenter Trucking*, the Board required the inclusion of eight oil tank drivers, sought to be excluded by the petitioner, in a unit of blacktop dump truck drivers. The tank drivers made nightly deliveries of oil to plants where it was used for the production blacktop that was distributed by dump truck drivers during the day. As discussed above, the Board in *Carpenter Trucking* distinguished traditional over-the-road cases because the tank drivers did not make overnight trips for lengthy periods. Here, short-line trips are scheduled for two or three days and can last all week if delays are experienced. Short-line drivers are assigned large tractor trailers with sleeping berths and refrigerators for supplies; they have access to a company car to shop for their supplies; they may take non-employee passengers with them on their routes; they are issued a "T-card" to pay for gas on the road; and they receive a per diem to cover other daily costs. Therefore, the interests of short-line drivers are far more akin to those of traditional over-the-road drivers than the tank drivers at issue in *Carpenter Trucking*.

Also integral to the Board's decision in *Carpenter Trucking* was a determination that the work of tank and dump truck drivers was significantly integrated, in a manner not applicable here. In *Carpenter Trucking*, all the tank drivers started with the company as dump truck drivers, thereby investing the latter petitioned-for employees with a particular interest in the former classification. The two driver classifications at issue also worked under common supervision. The Board in *Carpenter Trucking* also relied heavily on the interdependence of tank and dump truck drivers where the dump truck drivers could not deliver blacktop if tank drivers did not deliver the oil that was needed to produce it. The instant case involves no such mutual interdependency among Sayreville drivers, no job progression from local to short-line drivers and separate dispatching and immediate supervision of the two driver classifications at issue.

Based upon the above and the record as a whole, I find a unit of all local drivers excluding short-line drivers is appropriate.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also

eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 641**.

V. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North

Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **June 27, 2006**. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **July 5, 2006**.

Signed at Newark, New Jersey this 20th day of June, 2006.

/s/ Edward Peterson

Edward Peterson, Acting Regional Director
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